

REMARKS

The Examiner has made a restriction requirement requiring election between the inventions of :

Group I: claims 24-26, 30-34, 65-67 and 70-75 drawn to a method of establishing a standardized herbal bioresponse array for an herbal composition;

Group II: claims 27-34, 68, 69 and 70-75 drawn to a method of evaluating an herbal composition;

Group III: claims 35-47, 64 and 76 drawn to a method for predicting the biological activity of an herbal composition;

Group IV: claims 48-52 drawn to a method of determining if an herbal composition meets a standard specification;

Group V: claims 53-60 drawn to a method of adjusting the components of an herbal composition so that it meets a standard specification; and

Group VI: claims 61-63 and 70-75 drawn to a method of obtaining a set of discriminating molecular markers for an herbal composition.

The Examiner considers the inventions of Groups I-VI as lacking unity of invention because they lack the same special technical feature.

In view of the restriction requirement, Applicants elect, with traverse, to proceed with the examination of the claims of Group II: claims 27-34, 68, 69 and 70-75 drawn to a method of evaluating an herbal composition. Applicants respectfully traverse this restriction requirement for the following reasons.

PCT Rule 13.1 requires that unity of invention is found in those situations in which a special technical feature is common to multiple claims thus creating a single inventive concept. In this instance the common special technical feature is evaluating herbal compositions using marker data. This feature is common to all of claims 24-76. Therefore, the holding of a lack of unity of invention is improper. Applicants respectfully request the restriction be withdrawn.

Newly added claims 77-82 are directed to the elected invention (i.e., methods of evaluating herbal compositions). Support for each feature of the newly added claims can be found throughout the specification. See, for example, specification (published PCT), Example

14, pages 60-78. This example sets forth a method of evaluating different herbal compositions (i.e., different concentrations of an herbal composition) based on the analysis of the mRNA expression levels of 13,824 genes after exposure of Jurkat T cells to the herbal compositions. The mRNA expression levels of about 100 genes were compared to the mRNA expression levels of control Jurkat T cells that were not exposed to the herbal compositions. See, for example, Table 10, pages 67-69. Also, the concepts of normalized values, equivalency scores and correlation values are found throughout the specification. See, for example, pages 37-38 ("Algorithm[s]", which provides general background information on statistical procedures); page 40, lines 20-28 (discussion about statistical parameters, including correlations); page 48, lines 8-12 and page 70, lines 21-25 (normalized values, correlation values); and page 50, lines 14-26 (equivalency).

If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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